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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 52

UNITED STATES OF AMERICA, APPELLANT

v.

LUDENIA HOWARD, TRADING AS STOKES FISH COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, ORLANDO DIVISION

APPELLEE'S REPLY BRIEF

STATEMENT OF THE CASE

Criminal Information was filed against appellee, Ludenia Howard, charging that she delivered to the express company for transportation out of the state "150 pounds of fresh water bream, fresh water crappie, and fresh water black bass, and such transportation was then and there contrary to the laws of the State of Florida; in violation of Section 852, Title 16, United States Code."

The District Court quashed the Information on

the ground that there is no law of the State of Florida prohibiting the transportation of the fish described in the Information. (Appellant's brief, p. 4).

In 1951 the Legislature repealed the Florida statute which had prohibited the sale or transportation of black bass and certain other fish out of Florida.

The Florida Game and Fresh Water Fish Commission (hereinafter referred to as "Florida Commission") was created by a Constitutional amendment as set out by appellant. However, the amendment creating it gave it the power to fix bag limits and to fix open and closed seasons "on a **state-wide, regional** or **local** basis, as it may find to be appropriate, ...". (emphasis supplied). The said amendment also provided that "All laws fixing penalties for the violation of the provisions of this amendment ... shall be enacted by the Legislature ..." (Appellant's Brief, Appendix B, p. 43, 44).

Said Florida Commission, by its Rule 14.01 prohibited the transportation out of the State of Florida of black bass, bream and certain other fish (crappie was not included in this enumerated list), and all such prohibition was subject to the condition "provided, that holders of valid fishing licenses may carry out of the State or transport as personal baggage their legal bag limit thereof; ..." .

QUESTION PRESENTED

We think the question presented, as worded by the appellant, and particularly as expanded and enlarged in argument, is subject to some criticism and limitations. It is true that the commission was created by Florida Constitutional amendment, and this

is continually emphasized as if it were a matter of significance. We think the situation is no different from what it would be had the Constitution authorized the Legislature to create the commission and the Legislature had created it and given it exactly the same powers which it has. Furthermore, since the District Court quashed the Information on the ground that there is no law of the State of Florida prohibiting the transportation of the fish described in the Information, there are two questions here involved:

(1) Do the **rules and regulations** issued by the Florida Commission, under all the circumstances surrounding the said commission and the arbitrary powers given it, constitute the "law of the State of Florida"?

(2) If the said rules and regulations do constitute the law of the State, was there such a rule or regulation as would prohibit the transportation of the fish described in the Information?

If the appellant is to prevail, both these questions must be answered in the affirmative. If either is answered in the negative, then the District Judge ruled correctly.

We think the question involved in this case is strictly limited to the case of Ludenia Howard and the rules and regulations of the Florida Commission. We strongly contend that it cannot be considered, as argued by Appellant, that it covers the rules and regulations of commissions in many other states having various and sundry restrictions upon their powers not found in connection with the Florida Commission; and in our treatment of the question involved, we expect to confine ourselves strictly to the rules and regulations of the Florida Commission which has many and varied features peculiar to itself.

ARGUMENT

I. JURISDICTION.

Because of the printing bill, which the appellee can ill afford, we wish to refer to our discussion of this question in our former brief incorporating motion to affirm or dismiss, on pages 2 and 3 and pages 15 and 16, and we incorporate the same at this point by reference.

It is the **scope** of the decision of the District Court, not alone the **reasons** for the decision, which must in the final analysis determine the correctness of the ruling.

There were several questions disposed of by the said motion other than the status of the rules and their interpretation, and while the learned judge expressed the opinion that the rules and regulations of the Florida Commission did not constitute the law of the State of Florida as contemplated in the Act of Congress, he certainly did **not** say that otherwise the Information was good.

II. ARE THE "RULES AND REGULATIONS" OF THE FLORIDA COMMISSION THE "LAW OF THE STATE OF FLORIDA" AS CONTEMPLATED BY THE ACT OF CONGRESS COMMONLY KNOWN AS THE "BLACK BASS ACT"?

This question can not be determined on a basis of loose generalities and an enunciaton of principles applicable to commissions in some of the other states where such commissions were designed to give privileges to employees of railroads and the like, but must be carefully examined for what it is—a **penal** statute, which can brand a citizen as a criminal and deprive him of his liberty.

Ludenia Howard is thus informed against in this

case, and it is upon this basis and this basis alone that this question must be determined, and not upon the basis of the rules and regulations of various commissions with various and sundry powers, created for various and sundry purposes in numerous of the other states.

(A) THIS IS A PENAL STATUTE AND MUST BE STRICTLY CONSTRUED.

In this country, the liberty of its citizens is considered so important that an offense charged must be **plainly** within **the statute.** There are no **constructive offenses.**

United States v. Resnick et al
Same v. Acme Can Co.
299 U.S. 207; 57 S. Ct. 126

From judgment sustaining demurrer in this case and discharging the defendants, the United States appealed.

* * * * *

The Court said:

"(2-6) Statutes creating crimes are to be strictly construed in favor of the accused; they may not be held to extend to cases not covered by the **words used.** United States v. Wiltberger, 5 Wheat. 76, 95, 5 L. Ed. 37; Fasulo v. United States, 272, U.S. 620, 628, 47 S. Ct. 200, 201, 71 L. Ed. 443..."

* * * * *

"Before one may be punished, it must appear that his case is plainly within the statute; there are not constructive offenses. United States v. Lacher, 134 U. S. 624, 628, 10 S. Ct. 625, 33 L. Ed. 1080; United States v. Chase, 135 U. S. 255, 261, 10 S. Ct. 756, 34 L. Ed. 117; Fasulo v. United States, supra, 272 U. S. 620, at page 629, 47 S. Ct. 200, 202, 71 L. Ed. 443..." (emphasis supplied)

50 Am. Jur., p. 430

"S 407 Penal Statutes.—It has long been a well settled general rule that penal statutes are subject to strict construction. More accurately, it may be said that such laws are to be interpreted strictly against the state and liberally in favor of the accused. The rule is founded on the tenderness of the law for the rights of individuals; its object is to establish a certain rule, by conformity to which mankind would be safe, and the discretion of the court limited . . ."

(p. 433) (S 409)

"Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment. Such a statute should not be interpreted to impose restrictions on conduct not specifically enumerated in the legislative act, or to include cases omitted by the legislature, and which do not fall within the scope of the law. The fact that the statute may be easily evaded furnishes no excuse for supplying by judicial construction that which is palpably omitted therefrom. These rules prevail even though the court thinks that the legislature ought to have made the statute more comprehensive."

The foregoing principle is certainly not contradicted by the case, cited by the Appellant, of Lilly v. **Grand Trunk R. Co.,** 317 U. S. 481. This was **not** a criminal case, but, on the contrary, the court adopted the principal of liberal construction because the statute was for the **protection of employees.** The Court said:

"The Act, like the Safety Appliance Act, 45 U.S.C.A. No. 1 et seq., is to be liberally construed in the light of its prime purpose, the protection of employees and others by requiring the use of

safe equipment..."

Lilly v. Grand Trunk R. Co.
317 U.S. 481; 63 Ct. 347, 351

Likewise, the case of **Atchison, T. & S. F. Ry Co.** v. Scarlett, 300 U. S. 471, does not support the contention of the Appellant and does not conflict with the foregoing principle. This again was **not a criminal prosecution,** but applied to regulations for the safety of railroad employees and, therefore, was entitled to liberal construction. Likewise, the case of **Roumanian American Winery, Inc. v. Morgenthau, 152 F. 2d 452,** cited by Appellant, does not sustain Appellant's contention. This again was **not a criminal prosecution,** but was an attempt to secure a wine producer's and wholesaler's permit, and the question was whether or not the petitioner was a fit person to have such a permit, and had therefore been complying with the Federal law and rules and regulations regulating such business. The case is wholly without application to the case at Bar. Likewise, the case of **Phillips vs. United States, 312 U.S. 246,** cited by the appellant, **was not a criminal case,** but was a suit brought to restrain further interference with the closing or completion of a dam on a river in Oklahoma, and wholly fails to support the contention of the appellant. It is without value in this case.

Williams v. Bruffy, 96 U.S. 176, is without value in this case, although the appellant has taken us back to the time of the Confederacy to try to find some authority. This was **not** a criminal case. It is wholly unlike our present case; it dealt only with the jurisdiction of the court in its effort to safeguard a citizen **against** the impairment of the obligation of a contract and to protect him from acts repugnant to the Constitution of the United States. It has no value here.

Likewise, the cases of **Lake Erie & W. R. R. Co.**

v. Pub. Util. Comm., 249 U.S. 422; Arkadelphia Co. v. St. Louis S.W. Ry. Co., 249 U.S. 134; and **Columbia System v. United States, 316 U. S. 407,** are **not criminal cases,** are not in point with the case at bar, and are wholly without value as bearing on the question involved.

As a matter of fact, a careful examination of **all the cases** cited by the appellant on this question, shows that they have not brought to this court **one single case in point,** where a criminal Federal Act has been held to automatically apply because of some law of the state in question, and where that law of the state was based upon the acts of some commission or executive officer. In this case, counsel has exhibited great diligence, and we think it fair to assume that if there were one single case that would support their position, that it would have been set out in their brief with great fanfare in adequate footlights. Our own research through Words and Phrases covering the Federal system, has failed to reveal to us one single case where this court has ever held a Federal penal statute as good except on a basis of strict construction, and where it has by interpretation made out a **constructive offense** because of various and sundry considerations outside the wording of the law itself, as contended for by the appellant in this case.

The failure of appellant to recognize this as a **penal statute** and to apply to it the law necessary in such a case constitutes the fundamental error in appellant's brief—the error which caused appellant to make arguments and cite authority that have no application to the case at bar, as they deal with situations not penal and where liberal construction is appropriate and proper. In our former brief, we pointed out that this statute was penal and must be **strictly construed,** but in appellant's brief there is absolutely no answer to this fundamental proposition. We think the reason is obvious—there can be no answer.

(B) LAW OF THE STATE IN THIS CONNECTION CONSISTS OF STATUTORY LAW AS INTERPRETED BY OUR COURTS.

We respectfully submit that the "law of the State" of Florida, as used in the Federal Black Bass Act of 1926 as a basis for criminal prosecution, had reference to the **laws** of Florida that are to be found in the statutes of the State of Florida, and as interpreted by our courts. It was never intended to include, and does not include, **rules** and **regulations** as changeable as the winds, and that can not possibly be codified and included among our State laws for the reason that they do not have the necessary permanence.

Stoffel v. W. J. McCahan Sugar Refining & Molasses Co., 35 Fed. 2d 602 (Penn.)

* * * *

(Headnote)

"2. United States, Key 5 — United States Law is to be found in Constitution, Congressional Acts, Treaties, and Matters Specially Committed to Judicial Power in Court Rulings.

"Law of state is to be found in its statutory and constitutional enactments as interpreted by its courts, and, in absence of statute law, in rulings of its courts, whereas law of United States is to be found in Constitution and acts of Congress passed pursuant thereto, and in its treaties as interpreted by courts and in those matters specially committed to judicial power in rulings of its courts."

* * * * * *

52 C. J. S. p. 1025

"The law of a state is to be found in its statutory and constitutional enactments as inter-

preted by its courts and, in the absence of statute law, in the rulings of its courts. Its laws are, in consequence, its statutes or written law, and its judge-made laws or leges non scripta ..."

Again this question must be measured as a **penal statute** and no other measure is accurate or applicable. Numerous Florida cases have been cited by the appellant but not one single Florida case has been cited where our Supreme Court held to the effect that the rules and regulations of the Florida Commission was the law of the state **as contemplated by 16 U. S. C. 851,** commonly known as the Black Bass Act; and that a Federal Statute applicable only when a **law of Florida** had been violated would automatically apply to a citizen allegedly violating a **rule** of the Florida Commission. If our Supreme Court were ever to so hold, it would make no difference because such a question is strictly a Federal question, deals with a Federal statute, and any such decision would not be binding on this court. **Standard Oil Co. of California v. Johnson, 316 U.S. 481, 62 S. Ct. 1168.**

The appellant's failure to apply the yardstick of a **criminal statute** is the gravamen of the error into which they have fallen in their argument and in their presentation of authorities. In determining what is a "state law" for the purpose of determining jurisdiction of this court so that it may prevent the impairment of a contract or prevent other infringements of the Federal Constitution, great liberality is indulged to preserve the Constitution in its full vigor. In its definitions in determining the rights of an individual under rules and regulations of certain commissions in certain of the states, like railroad commissions, such statutes are liberally construed, and the rules of **such commissions** for these purposes may have the status of law and might be considered to be the law of the state for such purposes. It is a vastly different prop-

osition when we are measuring a **criminal statute** which must be **strictly** construed and which must find a definition of the crime in the **language** of the statute or **not at all.**

The appellant contends in this connection, however, that since the Florida Legislature passed a law making the violation of the regulations of the commission a crime, these regulations then become the law of the state by virtue of such statute. This is an ingenious argument but will not bear up under close scrutiny. It is true that the Legislature has made the violations of any rules or regulations which the commission may pass, a misdemeanor. The constitutional amendment creating the commission expressly provided that penalties for such violations must be passed by the Legislature. In other words, the constitutional amendment did not trust the commission with meting out the punishment for violations of its rules. However, it is without logical or legal support to say that this makes the various rules that are now in existence, or that may hereafter be enacted, **an Act of the Legislature.** If the Legislature should decide for some reason to make the violation of municipal ordinances a misdemeanor, this certainly would not make such ordinances the Act of the Legislature and entitle them to be codified along with our laws of the state. However, the appellant in this argument takes the position that a rule of the commission regardless of how absurd or how unreasonable it may be, becomes a statutory law of the State of Florida by inference or presumption once the Legislature assessed a penalty for the violation of **all rules and regulations;** then upon this **inference** or **presumption** the appellant makes the same a Federal offense automatically because it has by this inference become the statutory law of the State of Florida. This is basing **an inference on an inference, a presumption upon a presumption** in one of the most glaring and dangerous

kind of cases. It would not be sufficient to stand an attack even in a civil case. It certainly can not measure up as the basis for a **penal** statute. To say it would, would be to give to the Florida Commission the right to make, by its own arbitrary action, various and sundry acts a misdemeanor under the law of the State of Florida, and a **Federal offense** by **implication** under the Federal statute. No such basis for criminal prosecutions has ever existed anywhere in the English speaking world. We certainly can not destroy the ancient and long cherished safeguards against criminal prosecution in order to give to the Florida Commission a power not given it by the Constitutional amendment that created it—a power for which it has no use, a power wholly unnecessary to the purposes for which it was created.

(C) THE "RULES AND REGULATIONS" OF THE FLORIDA COMMISSION ARE OF SUCH A NATURE THAT THEY CAN NOT IN LAW OR REASON BE THE "LAW OF THE STATE OF FLORIDA" WITHIN THE INTENDMENT OF THE FEDERAL BLACK BASS ACT.

We frankly and fully concede that the Florida Commission is a legally constituted commission. We also concede without argument that its rules are enforced in the State of Florida, so long as these rules are within the scope of the amendment creating it. For these purposes in the State of Florida they are given the force and effect of law. However, this does not make them the law of Florida as contemplated by the Black Bass Act.

The appellant produces as one of its prime arguments that if the reasoning of the District Court in this case is adopted, then the conservation program would largely fail; that its enforcement in the states is largely through commissions of one kind or another, and that if the rules of this commission do not constitute the law of Florida, then Federal enforcement

in **all** states having commissions would fall. This does not necessarily follow — and we neither admit nor deny that the rules and regulations of commissions in **other** states where such rules and regulations are **properly safeguarded**, constitute the law of that state. This is not a necessary determination in this case. We are not dealing with a conservation problem as a whole; but as to whether or not one individual, Ludenia Howard, can be convicted of a constructive Federal offense on the ground that unless she is convicted they can not properly enforce the fish laws in California or Colorado. If we must choose between constructive criminal offenses and the failure of the entire conservation program, we prefer that American liberty be preserved and that it be surrounded by all the English and American safeguards developed over a period of half a millennium.

However, such a choice is not necessary. If Congress desires that its penal statutes relative to black bass and other fish or fowl shall be automatically applied by the rule and regulation of a commission in Florida or elsewhere, then let it unequivocally and plainly say so. However, when it does, we think that it will prescribe different conditions and different restrictions to which those rules and regulations must conform from that which exist in the State of Florida at the present time.

Even if rules and regulations of a commission under **some conditions and restrictions** could be the law of a state, it does not follow that the **rules** and **regulations** of the **Florida Commission** are the law of the State of Florida. We take the position that these rules and regulations are **not** the law of Florida, and that **under the conditions and circumstances surrounding them,** and which are an integral part of their very nature, **THEY CAN NOT BE THE LAW OF FLORIDA.** Some of such reasons are:

1. When the Black Bass Act was enacted by Congress in 1926, there was no such commission in existence in the State of Florida, so the Act could not have been intended to apply thereto.

This is so obvious as to hardly justify argument, except for the position taken so vigorously by opposing counsel. To say that Congress foresaw in 1926 the Florida Commission and other similar commissions, and intended that this Act should cover the rules and regulations of such commissions, is wholly fantastic. Of course, Congress intended exactly what the language said, — that it should apply to those states where the "law of the state", as determined by the method by which all such laws were determined at that time, namely, by the Act of the Legislature, and as interpreted by its courts, made transportation illegal,—and nothing more. To now say that it applies to the rules and regulations of the Florida Commission is to enlarge the original Act of Congress by construction, and to create a constructive offense. It is to read into the Act of Congress what was not there originally.

Astute counsel for the appellant recognize this situation, but counter that in more recent years the Act has been amended and that at the time these amendments were enacted there were commissions which had various and sundry powers. However, the appellant has overlooked the fact that these amendments did not enlarge the **scope** of the original law but merely enlarged the **fish** to which the law applied. If Congress, at the time of the amendments, intended that the same should apply not only to the "law of the state" as originally enunciated, but to the rules and regulations of various commissions, it would have been a very simple matter for it to have said so while it was amending the Act otherwise. That it did not is the strongest of arguments for the proposition that

it did not intend the Federal statute to become automatically operative upon the whim and caprice of some commission.

In this connection, it is interesting to note that the appellant, as an argument in its favor, quotes from the Senate and House reports accompanying the bill (Appellant's brief, pp 27, 28). We think the appellant overlooked a very important statement in this report that shows conclusively exactly what it was to which it was expected to apply:

> "It will strengthen the laws of any State wherein the taking of bass commercially is prohibited. In some States, where such law is now on the statute books, its effect is nullified . . ."

There are no rules of the Florida Commission on the "statute books" of Florida, and quite obviously this is the kind of law that the Act was intended to bolster.

2. The rules and regulations of the Florida Commission are not considered the laws of Florida by the Commission itself. They are still the rules of the Game and Fresh Water Fish Commission, and are NOT CODIFIED WITH the laws of Florida.

The Florida Commission calls them "rules". They are printed in a little pamphlet known as the "Wild Life Code" under the heading:

"Rules and Regulations of the Game and Fresh Water Fish Commission"

In the same pamphlet are printed numerous sections of the Florida statutes. These sections are printed under the heading:

"Laws of Florida"

(See copy of Code Book deposited with Court

by appellant—Appellant's brief, p. 37)

The laws of Florida are published by the Secretary of State as Florida Statutes, and by Harrison Company and West Publishing Company as the Florida Statutes Annotated. These laws are revised every two years after the Legislature adjourns, and they remain the law, as interpreted by our courts, until the Legislature convenes two years hence. The rules of the Game and Fresh Water Fish Commission are found nowhere among these laws. Great formality and great exactness is required in the handling of of a law even after the Legislature has voted the same. This is to the end that the final reported wording of the law may be kept Simon pure and accurate. There are no such safeguards surrounding the hastily constructed rules and regulations of the Florida Commission. The only requirement is that if it is of State-wide application it shall become effective thirty days after the filing of a certified copy in the office of the Secretary of State. If they are not of State-wide application, then twenty days or even none.

3. The rules and regulations of the Florida Commission may be local or regional, as contrasted with State-wide, — which could result in such confusion that a Federal penal statute could not be based thereon.

This is a very fundamental defect in the rules and regulations, and comes from the Constitutional amendment which creates the Florida Commission. It provides that said commission shall have the power to fix bag limits and to fix open and closed seasons "on a state-wide, regional or local basis, as it may find to be appropriate" (Appellant's Brief, Appendix B, p. 43). Under this provision the Commission can declare a closed season on black bass, etc. in Osceola County, Florida, but can say that such bass can be taken in Seminole County, or regionally by saying

that they can be taken in the counties bordering the St. Johns River. They can then say that such bass taken legally can be transported anywhere in the State of Florida while maintaining that bass taken in Osceola County cannot be transported anywhere. In other words if such black bass are caught in Osceola County and shipped into Georgia, the Federal statute would apply and it would be a Federal criminal offense; but if such shipment originated in Seminole County or any of the other counties bordering on the St. Johns river, then they could be legally shipped into Georgia and the Federal statute would not apply. We can ask but we cannot answer: What is the status of fish caught in Osceola County but shipped from some point on the St. Johns; or caught on the St. Johns (where they are legally caught) if shipped from Osceola County where it is illegal to ship them if caught there. To what quagmire has the position of the Federal statute fallen? It will take more than the glittering general conclusions of counsel for the Government to make it convincing that Congress ever intended to give **such** a commission, possessing such a confusion of powers, a **Federal book of blank Informations, all signed up ready to use as it sees fit.** We find it impossible to believe that Congress, when it passed the Black Bass Act, ever intended it to apply under such situations, or ever intended the Federal officials to embark upon such a snipe hunting expedition. To now read such into the law, is to read into it what is not there.

4. The rules and regulations of the Florida Commission are so changeable that they are without the permanence or substance required to give our citizens knowledge of them, so they can be the "law of the State of Florida" in the sense that they can invoke automatically a Federal penal statute.

Herein lies a fundamental weakness of the rules

and regulations which will forever prevent them as now constituted from becoming the "law of the state" in the sense that a Federal penal statute can be predicated thereon. A law must be definite and certain, readily found, properly codified, so that the people who are required to obey it can with reasonable diligence know it. Herein lies the very fundamental and impelling reason why these rules and regulations are not found among our statutes. They may be changed before the ink is dry. A rule of the Florida Commission may be passed today and filed with the Secretary of State. The Legislature says it shall become effective thirty days thereafter if of statewide application. Whether it had the authority to say that is questionable. But at any rate, tomorrow at an early breakfast the Florida Commission can change its mind and change its rule, and file a new pronouncement with the Secretary of State. If the rule is not of state-wide application, the statute says it need be filed but twenty days, and then in a subsequent section it takes it all back and says it does not have to be filed at all—it was only joking,—it is **not mandatory.** The Florida Commission would not be likely to change its mind every day, but there is certainly no restriction upon how often it can do so, except its own discretion.

The Legislature, recognizing the inability of the citizens, or even the lawyers of the state, to know what a rule is at a particular moment, prescribes certain things that the Commission should do, like sending copies to the county judge, and advertising to a limited extent. But again these are merely directory and **not mandatory** and do not cure the evil. (Section 372.021, Florida Statutes Annotated, Appellant's Brief, Appendix B, pp 44, 45, 46). This little pamphlet can be obtained from the Commission, and may be shown to be authenticated as of a **particular** date

written in pen and ink, so that if the rule or regulation is changed the next day, the next week, or the next month, they can write in a different date and pin on whatever change has been made.

Counsel for appellant (Appellant's Brief, p. 37) advise us that they have obtained such a copy of this little "Code Book" dated June 29, 1956, together with amendments certified on July 17, 1956. We are very glad of this, as it emphasizes our point. Before a copy of appellant's brief had reached us, bragging about the virtues of this Code Book, any part or all of the rules and regulations might have been changed, and unless able counsel for the appellant has since then contacted the Florida Commission, they know no more about what the present rules and regulations of the Commission are than we do, which is exactly nothing.

Appellant in its brief, pp 37, 38, recognizes this difficulty and seeks to overcome it by pointing out that one holding a license as a wholesale fish dealer or valid fishing license, is advised of the law because such license contains on the back thereof a synopsis of the fresh water fishing laws of the state. By this, we presume appellant means the rules and regulations of the Florida Commission. Such license is usually obtained several days or a few weeks before the time the old license expires. It takes a little while to print it. If that synopsis correctly stated the rules at the time it was delivered to the printer, it could easily be null and void before the date it became operative, or at any time thereafter. To say that a person interested in obeying the law would have no difficulty in discovering the applicable regulations is to wholly ig. ore the factual situation.

The appellant has referred considerably to **Bronson v. Florida**, 83 So. 2d 849. This case dealt primarily with resisting arrest. The defendant had in his

possession alligator hides under eight feet in length, which was in violation of a rule of the Florida Commission. Before the decision was even handed down in that case,the rule had been changed to alligator hides under **six** feet. **Now** it may be six feet, two feet, or no feet. There probably are not ten lawyers in the State of Florida who at the present moment would **know,** unless he has had occasion within the last few days to secure from the Florida Commission the little pamphlet certified in ink as being one of a certain date. Even then, without telephoning, he would not know but what the rule had been changed the next day. The several Florida decisions cited by Appellant are not determinative of the issue in this case. We have already readily admitted that the **rules** of the Commission are enforceable in the State, but it does not follow that a penal Federal Statute automatically attaches, when to do so would violate the **words** and **principles** in such Statute.

A most essential thing in this United States is for its citizens to obey and bow to the majesty of the law, and respect it. This implies, as a necessary corollary. that the law can be known so that it can be obeyed, and so that it can be respected. One can not obey, nor can one respect, the unknown, and this great objective is a two-fold proposition. It places upon the lawmakers the duty of making and explaining its law so that it can be known and obeyed, as well as the duty upon the citizen to strive diligently to know and to obey it. To extend by construction a Federal statute, criminal in its nature, based upon the **law** of Florida, so as to make that Federal statute conditioned upon the violation of an **arbitrary and changing** rule or regulation, is to violate the foregoing principles.

Furthermore, to extend the basis of the Federal statute beyond the State law, as codified in our statute books, is to start down a path, the end of which we cannot see. If this can be applied to a **rule** of the

Game and Fresh Water Fish Commission of five members, it would likewise apply if the number were reduced to three—to two—to one. If it applies when the only restriction upon its change is the **whim** and **feelings** of the Commission, it could be applied to the whim and feelings of a single individual. If it can be applied when the rule need not be codified and when the only requirement is that it be filed with the Secretary of State within thirty days, it would likewise be applicable if the thirty days were reduced to twenty—to ten—abolished altogether.

> On this question this court has already spoken: "... every citizen is entitled to fair warning of the traps which the criminal law lays."
>
> **United States v. Carroll, 345 U.S. 457, 460; 73 S. Ct. 757, 759**

III. UNDER THE "RULES AND REGULATIONS" OF THE FLORIDA COMMISSION, THE FACTS ALLEGED IN THE INFORMATION DO NOT CONSTITUTE AN OFFENSE.

In the alternative, if the rules and regulations of the Florida Commission constituted the **law** of the state (which presumption we stoutly deny) in the construction of the law then applicable to the Information in question, it would be necessary that the Information state a cause of action under the **rules** and **regulations.** The Information charged that Ludenia Howard delivered for shipment "150 pounds of fresh water bream, fresh water crappie, and fresh water black bass, and such transportation was then and there contrary to the laws of the State of Florida; in violation of Section 852, Title 16, United States Code." Now, under the rules and regulations of the Florida Commission (Rule 14.01, Appellant's brief, Appendix B, pp. 48, 49) "crappie" is **not named in the list of fish,** the transportation of which is prohibited; neither is "crappie" defined anywhere in said rules which rules

out any suggestion that the Commission might have intended to prohibit its transportation by some inference, presumptin, or construction. Hence the transportation of the same is not made a violation of the rule and regulation cited by appellant. Consequently, the only violation would relate to the black bass and to the bream. Since there is no allegation as to what part of the 150 pounds was comprised of black bass and bream, there is no way that it can be ascertained under the rules and regulations (presumed law of the State of Florida) as to how much of the said 150 pounds was legal and what part was illegal. To put the matter absurdly, but within the scope of the Information, as measured by the rules and regulations, the 150 pounds shipment might be comprised entirely of crappie except for a piece of bass and a piece of bream which a vicious crappie had bitten off but got caught before he had swallowed it. In other words, the amount of black bass and the amount of bream in the said shipment could be so small that the law would not take notice of it under the doctrine of **de minimis non curat lex**—a trifle too small for the law to notice.

Or there could be 140 pounds of crappie, 5 pounds of bass, and 5 pounds of bream. This would be no offense at all if the amount of bream and bass were within the bag limit.

In other words, if the Information were measured by the rules and regulations of the Commission it would then be necessary to interpret these rules and regulations as the applicable law, and this law would not spell an offense.

CONCLUSION

When Congress passed this Act in question in 1926, it certainly did not have in mind any rules of the State Game and Fresh Water Fish Commission, because such Commission did not exist until January 1, 1943. Had Congress intended that this Act should apply to rules of a **commission,** or the orders or rules of some State executive officer, not codified, not known, nor of any regular or definite standing—then the Congressional Act could well have cured this ambiguity by saying also the "rules and regulations of any commission or any official, when such rules and regulations are enforced within the state." But the Congressional Act **did not say this!** To read this into it now, by **construction,** is to read into it what was not said and what was not there before. To make this statute the basis of this criminal prosecution, it is necessary to stretch it by interpretation beyond the language of the Act—we believe beyond the intention of the Act—and create a **constructive offense.** We respectfully submit that this is not only outside the language of the Statute as passed by the Congress; but it is not in accordance with its intendments, and that it imperils and jeopardizes, without due process of law, the liberty of our citizens.

We respectfully submit that the district court's interpretation of the statute was not erroneous, but was in accordance with the language of the Act of Congress; that Appellant's contention would do nothing less than create **constructive offenses** under United States law; and that by the language of the Act it does not apply to regulations of a commission or any executive officer ,changeable at will, with no substance or permanence—not codified among the stat-

utes of the State, and impossible of such codification.

Respectfully submitted,

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